



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 24 2005

Stanley M. Brand, Esq.
The Brand Law Group
923 Fifteenth Street, N.W.
Washington, DC 20005

RE: MUR 5408
Reverend Alfred C. Sharpton, Sharpton
2004 and Andrew A. Rivera, in his official
capacity as treasurer

Dear Mr. Brand:

On February 10, 2004, the Federal Election Commission notified your clients, Alfred C. Sharpton, Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 3, 2005, found that there is reason to believe your clients, Alfred C. Sharpton, Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer violated 2 U.S.C. §§ 441b and 441a(f), provisions of the Act. In addition, the Commission found reason to believe that your clients, Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer violated 2 U.S.C. § 434, a provision of the Act, and knowingly and willfully violated 2 U.S.C. § 434(b)(4)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that Respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

| In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kathleen Guith, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

Respondents:

**Reverend Alfred C. Sharpton, Sharpton 2004
and Andrew A. Rivera, in his official
capacity as treasurer**

MUR: 5408

I. INTRODUCTION

The complaint and amended complaints in this matter allege that Reverend Alfred C. Sharpton and his principal campaign committee, Sharpton 2004 (f/k/a the Rev. Al Sharpton Presidential Exploratory Committee) received and failed to report a variety of prohibited and excessive in-kind contributions between 2001 and 2004.¹ The primary focus of the complaint is an allegation that the National Action Network, Inc., a non-profit corporation founded and run by Sharpton, was used as a vehicle to subsidize a wide range of campaign staff and travel expenses. After evaluating all available information, including materials submitted by Sharpton 2004 in connection with its application for and suspension from eligibility for public financing, the Commission finds reason to believe that Alfred C. Sharpton, Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

¹ The vast majority of the events discussed in this Factual and Legal Analysis occurred after the effective date of BCRA and its corresponding regulations. Therefore, this Report analyzes the relevant portions of the Act and its corresponding regulations, including those amendments implemented by BCRA, Pub. L. No. 107-155, and those regulations promulgated to implement the BCRA amendments.

1 **II. BACKGROUND**

2 **A. Identities of Respondents and Related Principal Actors**

3 **1. *Reverend Alfred C. Sharpton and Sharpton 2004***
4

5 Sharpton was a candidate for the Democratic Party's nomination for President of the
6 United States in the 2004 primary election. Sharpton's principal campaign committee is
7 Sharpton 2004.² Although he has never held public office, Sharpton has been a federal candidate
8 on three prior occasions, having run in New York's Democratic primaries for the United States
9 Senate in 1978, 1992 and 1994. Both prior to and during his presidential candidacy, Sharpton,
10 who has a national reputation as a civil rights activist, served as President of the non-profit
11 corporation, the National Action Network, Inc.

12 **2. *National Action Network, Incorporated ("NAN")***

13 NAN, a domestic non-profit organization incorporated in the state of New York in 1994,
14 was founded by Sharpton in 1991 as an outlet for his civil rights work. The organization appears
15 to be focused on grassroots activity designed to speak out on civil and human rights issues.
16 Sharpton has served as President of NAN since its founding. Between 2001 and 2004, Sharpton
17 engaged in an extensive travel schedule that he purports was dedicated, at least in part, to NAN-
18 related activity.

19

² On April 29, 2003, Sharpton filed a Statement of Candidacy, designating Sharpton 2004 as his principal campaign committee. The Committee's then-treasurer also filed the Committee's first disclosure reports on that date. On January 21, 2004, Sharpton and the Committee entered into a Conciliation Agreement with the Commission in MUR 5363 admitting that Sharpton was a candidate at least as early as October 2002, yet failed to file his Statement of Candidacy, an Amended Statement of Organization, and two disclosure reports in a timely manner. See MUR 5363 Conciliation Agreement ¶¶ V.1-3. MUR 5363 did not take up the issue of whether the Committee's reports, once filed, disclosed all expenditures made during the time that Sharpton was "testing the waters" of his candidacy. See MUR 5363, 1st GCR at note 10.

1 3. ***Roger Stone***

2 Roger Stone is an experienced political consultant who reportedly helped Sharpton staff
3 his campaign and hire consultants for the Democratic Party primaries. Stone also reportedly
4 assisted Sharpton in his bid for presidential matching funds from the Commission, and served as
5 a general consultant to Sharpton during the campaign. It has been reported that Stone either
6 contributed or loaned more than \$200,000 to NAN during the pendency of the Sharpton
7 campaign and paid for Sharpton's travel expenses to various campaign-related events. *See*
8 Wayne Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5, 2004; *see also* Wayne Barrett,
9 *Sharpton's Cynical Campaign Choice*, VILLAGE VOICE, Feb. 11-17, 2004.

10 4. ***Shared Consultants***

11 Beginning in Fall 2003, a number of political consultants reportedly had concurrent
12 relationships with NAN and Sharpton 2004. Charles Halloran is the owner of Charles Halloran
13 Development, a political consulting firm based in Alexandria, Virginia. Halloran, reportedly at
14 the request or suggestion of Roger Stone, took over as Sharpton's campaign manager in
15 September 2003.³ Halloran then reportedly enlisted assistance for the campaign from Archer
16 Group, Inc., a consulting firm, and an individual named Elizabeth Burke. *Id.* Halloran is not a
17 named respondent in this matter.

18 Archer Group, Inc. is a San Francisco-based political consulting firm which provided
19 services to both NAN and Sharpton's campaign beginning in late September 2003. Archer

³ Sharpton 2004 disbursed \$10,000 in consulting fees to Halloran Development in January 2004 and approximately \$46,000 in reimbursement expenses between November 2003 and January 2004. Sharpton 2004's most recently filed disclosure report lists a \$65,000 debt to Charles Halloran Development for "campaign management consultant fees." *See* Sharpton 2004 Year-End Report, filed Jan. 31, 2005 at 13.

1 Group, Inc. was reportedly initially enlisted by Charles Halloran to design a voter registration
2 program for NAN in exchange for a \$20,000 per month fee. *Id.* However, Archer Group, Inc.
3 reportedly began working primarily for Sharpton 2004 shortly after it was retained.⁴ *Id.* The two
4 Archer Group, Inc. executives working on the campaign were Michael Pitts, who was named
5 Sharpton's Deputy Campaign Manager in December 2003, and Ron Coleman.

6 Elizabeth Burke worked as a scheduler for the Sharpton campaign beginning in October
7 2003. Burke, who was reportedly brought into the campaign by Charles Halloran, has stated that
8 she was also paid a salary from NAN while she worked for the campaign, although her time was
9 fully devoted to the work of the campaign. *Id.*

10 Eddie Harris is a filmmaker who accompanied Reverend Sharpton on his travels between
11 2001-2004. Although Harris reportedly served as the Sharpton campaign's videographer,
12 Sharpton 2004 now claims that Harris' services were provided to NAN, not the campaign.

13 5. *LaVan and Wendy Hawkins*

14 LaVan Hawkins is the owner of Hawkins Food Group, Inc., a Detroit based corporation.
15 In early 2003, Sharpton attended a party at the home of LaVan Hawkins and his wife, Wendy
16 Hawkins, in Atlanta, Georgia that was reportedly a fundraiser for Sharpton's campaign. LaVan
17 and Wendy Hawkins each contributed the maximum \$2,000 to Sharpton in 2003. In addition,
18 Hawkins Food Group, Inc. paid Sharpton a \$25,000 consulting fee in 2003, although the nature

⁴ Sharpton 2004 disclosure reports show that Sharpton campaign paid Archer Group, Inc. a total of \$20,000 between December 2003 and January 2004 for campaign fieldwork, campaign logistics, and campaign consultants. Sharpton 2004's most recently filed disclosure report lists a debt of approximately \$26,000 to Archer Group/Michael Pitts for "campaign consultant/field operations." See Sharpton 2004 Year-End Report, filed Jan. 31, 2005 at 11.

1 of the services provided by Sharpton to Hawkins Food Group, Inc. is unknown.⁵ See Alfred C.
2 Sharpton, Form SF278, Executive Branch Personnel Public Financial Disclosure Report, dated
3 June 30, 2003, Schedule A.

4 **B. The Sharpton Campaign**

5 Sharpton began paving the way for a potential presidential candidacy as early as August
6 2001.⁶ In February 2002, Sharpton reportedly commenced a "Getting to Know You Tour," and
7 traveled to New Hampshire and Iowa, but Sharpton 2004 reported no disbursements in
8 connection with this trip. Sharpton became a candidate, within the meaning of the Act, no later
9 than October 2002. See MUR 5363 Conciliation Agreement ¶ IV.10.

10 It appears that Sharpton traveled extensively during the early days of his campaign,
11 although the Committee reported no expenditures for travel taken during 2002. In early 2003
12 Sharpton traveled to Atlanta, Georgia to attend what was reported to be a lavish fundraiser for
13 his campaign at the home of LaVan and Wendy Hawkins. See Kevin Chappell, "How La-Van
14 Hawkins Rose From the Projects to a Private Jet and a Multi-Million-Dollar Empire," *Ebony*,
15 April 2003, p. 42. Sharpton traveled to the party from Detroit with Hawkins in Hawkins' private
16 jet, which he uses to commute between his business in Detroit, and his home in Atlanta.
17 Hawkins Resp. at 2. Sharpton 2004 reported no expenditures or in-kind contributions in
18 connection with this event.

⁵ Mr. Hawkins' availability to provide testimony in connection with any Commission investigation of this MUR may be affected by a pending federal indictment against him for fraud and perjury in connection with his purported involvement in attempts to improperly influence Philadelphia city officials.

⁶ On August 20, 2001 Sharpton announced that by November 2001 he would establish a presidential exploratory committee. In December 2001, Sharpton appeared at a conference in Atlanta entitled "The State of the Black World," during which he discussed his presidential aspirations and the formation of an exploratory committee for a possible campaign. Rob Borsellino, *Al Sharpton to Pay Political Visit*, DES MOINES REGISTER, Feb. 25, 2002.

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1 In late 2003, Sharpton began conferring with political consultant Roger Stone. Sharpton
2 acknowledges that Stone, an established professional political consultant, assisted Sharpton's
3 campaign, particularly with its anticipated application for federal matching funds. *See* Wayne
4 Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5, 2004. After Stone began consulting
5 with Sharpton, Charles Halloran became campaign manager for Sharpton 2004 and hired
6 consultants Elizabeth Burke and Archer Group, Inc. to provide assistance to the campaign.
7 Burke and Archer Group, Inc.'s consultants, who also received compensation from NAN,
8 reportedly worked exclusively on the campaign from Sharpton's New York headquarters.

9 Sharpton asserts that he "undertook a great deal of non-campaign related activities on
10 behalf of NAN during the same period in which he was a presidential candidate." Sharpton 2004
11 Resp. to FEC Matching Funds Inquiry. Archer Group, Inc. consultant Michael Pitts has
12 reportedly stated that these NAN trips were "commingled" with campaign trips. *See* Wayne
13 Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5, 2004. Sharpton admits that Sharpton
14 2004's disclosure reports do not accurately reflect which travel expenses incurred by Sharpton
15 were campaign-related and which were not.⁷ Sharpton 2004 Resp. to FEC Matching Funds
16 Inquiry.

17 **C. Sharpton 2004 Application for Public Financing**

18 On January 2, 2004, Sharpton and Sharpton 2004 applied for matching fund payments
19 under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042. *See*
20 11 C.F.R. parts 9031-9039. The application included Sharpton's certification that he had not and

⁷ The Committee claims that it has now conducted a detailed analysis of Sharpton's expense records and amended its disclosure reports accordingly. *Id.* Notwithstanding the claim, the Committee has not amended its reports to include disbursements for many trips that apparently included campaign appearances.

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1 would not exceed the expenditure limitations at 26 U.S.C. § 9035 and 11 C.F.R. §§ 9035.1 and
2 9035.2, including the \$50,000 personal expenditure limitations.

3 The Commission qualified Sharpton as eligible to receive public funds and on March 11,
4 2004, certified an initial \$100,000 payment. However, the Committee's disclosure reports
5 revealed that Sharpton had made personal expenditures in the amount of \$47,821.13, and thus,
6 was extremely close to exceeding the \$50,000 personal expenditure limitation. Because
7 Sharpton had the practice of using his personal credit card to pay for campaign expenditures, the
8 Commission opened an investigation to resolve whether there were credit charges pending which
9 would result in Sharpton exceeding or having exceeded his \$50,000 personal expenditure
10 limitation.⁸ See 26 U.S.C. § 9039(b).

11 After reviewing Sharpton 2004's disclosure reports, along with information produced in
12 the investigation, the Commission made an initial determination to suspend matching fund
13 payments to Sharpton because Sharpton had exceeded his personal expenditure limitation. On
14 April 21, 2004, Sharpton responded to the suspension by asserting that he had expended only
15 \$46,956.23 of his personal funds in connection with his campaign and that the Committee had
16 mistakenly reported large amounts of Sharpton's non-campaign related expenditures as
17 campaign expenditures.⁹ However, the information provided to the Commission by the
18 Committee appeared to show that Sharpton knowingly and substantially exceeded the \$50,000
19 personal expenditure limit by \$66,976 as of January 2, 2004. Therefore, the Commission made a

⁸ See 11 C.F.R. § 9035.2(a)(2) (credit card charges count against a candidate's personal expenditure limitations to the extent that the full amount due, including any finance charge, is not paid within 60 days after the closing date of the billing statement on which the charges first appeared).

⁹ In particular, Sharpton claimed that travel and salary expenses related to the travel of videographer Eddie Harris were mistakenly reported as campaign expenditures even though Harris accompanied Sharpton on behalf of NAN.

1 final determination to suspend matching fund payments to Sharpton and the Committee on April
2 29, 2004. See Statement of Reasons in Support of Final Determination to Suspend Matching
3 Funds, dated April 29, 2004. On May 14, 2004, the Commission determined that Sharpton and
4 the Committee must repay \$100,000 to the United States Treasury.¹⁰

5 **III. ANALYSIS**

6 Complainant's central allegation is that "Sharpton ran an off-the-books campaign in
7 which campaign expenses were paid by parties without the proper disclosure to the Federal
8 Election Commission and at times in apparent violation of campaign contribution limits and the
9 legal restriction against corporate contributions."¹¹ MUR 5408, Second Am. Compl. at 2. The
10 available information supports the allegation that Sharpton's campaign was subsidized by
11 various unreported, excessive, and impermissible in-kind contributions to Sharpton 2004.
12 Accordingly, as detailed below, the Commission finds reason to believe that the Sharpton
13 Respondents violated the Act.

14

¹⁰ On July 16, 2004, Sharpton 2004 requested administrative review of the repayment determination and requested an oral hearing. The Commission approved the request and scheduled an oral hearing for September 29, 2004. One day prior to the scheduled hearing, Respondents requested a ninety-day postponement of the hearing. The Commission granted this request and rescheduled the hearing for December 1, 2004. Respondents subsequently requested another postponement. The Commission denied this request, and Respondents indicated that no representative would appear on December 1, 2004. The Commission is currently in the process of completing the administrative review based on the written submissions made by the Committee.

¹¹ In separate responses to the complaints, Sharpton and NAN each argue that the complaint does not meet the procedural requirements contained in the Act's corresponding regulations. Sharpton argues that the complaint is insufficient because it is based on "no pertinent, first-hand facts." Sharpton Resp. at 2. NAN argues that the complaint does not provide sufficient information to support the allegations because it is based on a single newspaper article that is not credible. NAN Resp. at 1-2. The Act and its corresponding regulations clearly contemplate and allow complaints to be based on second-hand information contained in news accounts. Pursuant to 11 C.F.R. § 111.4(d)(2)-(3), a complaint that is not based on personal knowledge should be accompanied by an identification of the source of the information which gives rise to the complainant's belief in the truth of such statements and shall contain a clear and concise recitation of the facts which describe a violation of the statute or regulation. Because the complaint's allegations are specific and accompanied by the identification of a credible source of information, the Commission finds Respondents' procedural arguments unpersuasive.

A. Unreported In-Kind Contributions

1. Travel Expenses

The complaint alleges, and the available information suggests, that Sharpton 2004 did not report all of the travel expenses Sharpton incurred in connection with his candidacy, including those made while he was "testing the waters," and that this campaign-related travel was subsidized by NAN in the form of shared events for which NAN picked up the entirety of Sharpton's travel costs. Second Am. Compl. at 2, 5; *see* 11 C.F.R. § 100.72(a)–(b). In addition, the First and Second Amended Complaints allege that political consultant Roger Stone charged \$18,000 of Sharpton's campaign-related travel expenses to his personal credit card without receiving reimbursement from Sharpton 2004.

Expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall be qualified campaign expenses and be reported by the candidate's authorized committee as an expenditure. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1).¹² Furthermore, if an individual who had been "testing the waters" subsequently becomes a

¹² Pursuant to 11 C.F.R. § 9034.7(b)(2), "For a trip that includes campaign and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop to each subsequent campaign-related stop, back to point of origin. The calculation is based on commercial airfare rates at time of travel, and the committee is responsible for retaining documentation of these rates. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign-related activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related." Furthermore, "For each trip, an itinerary shall be prepared by the Committee and made available to the Commission for inspection. The itinerary shall show the time of arrival and departure and the type of event." 11 C.F.R. § 9034.7(b)(3).

1 candidate, funds received or payments made for "testing the waters" are contributions and
2 expenditures subject to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a) and
3 100.131(a). Such contributions must be reported with the first report filed by the principal
4 campaign committee of the candidate, regardless of the date the funds were received or the
5 payments made. *Id.* Therefore, once Sharpton became a candidate, his principal campaign
6 committee was responsible for reporting all of the campaign-related travel expenses that he
7 incurred during the "testing the waters" period.

8 On April 29, 2003, Sharpton 2004 filed its first required disclosure report, the 2002 Year-
9 End Report, disclosing the Committee's receipts and disbursements from July 1, 2002 through
10 December 31, 2002. The report shows that the Committee made approximately \$24,000 in
11 expenditures during the reporting period, and that each of the disbursements was made in
12 connection with a single fundraising event held by Sharpton in Washington, D.C. However,
13 Sharpton 2004 reported no disbursements for travel expenses for the trip to Washington, D.C. for
14 the fundraiser.¹³

15 There is also information to suggest that Sharpton made additional expenditures for travel
16 during the time period covered by the Committee's 2002 Year End Report that were not
17 contained in the Committee's disclosure reports. Press accounts of Sharpton's activity indicate
18 that he traveled to numerous additional cities in connection with his exploratory presidential
19 committee, including trips to New Hampshire and Iowa in February 2002. *See supra* p. 6. Since
20 it is unlikely that Sharpton could have incurred no expenses related to this travel, significant

¹³ The disbursements included payments for caterers, stage and sound, event space and insurance, entertainment, and door workers. *See* Sharpton 2004, 2002 Year-End Report, Schedule B, filed April 29, 2003. Although the Committee's treasurer filed an amended version of the report on November 28, 2003, the amendments did not affect the reported disbursements.

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1 questions exist as to whether the disclosure reports filed by the Committee include all of the
2 expenditures made by Sharpton in connection with his efforts to "test the waters" of a potential
3 presidential campaign. As a result, there is a reasonable basis to investigate whether Sharpton
4 engaged in any campaign-related travel without reporting any corresponding disbursements for
5 the travel expenses incurred for that travel.

6 Furthermore, the available information suggests that at least a portion of any unreported
7 campaign-related travel expenses incurred by Sharpton may have been paid for by NAN in
8 violation of 2 U.S.C. § 441b, and/or by Roger Stone in an amount in excess of the Act's
9 contributions limit at 2 U.S.C. § 441a(a)(1)(A). There are reported statements by Archer
10 consultant Michael Pitts acknowledging that campaign trips and NAN trips were "commingled,"
11 and that he scheduled many events across the country that were part campaign and part NAN.
12 See Wayne Barrett, *Sleeping With the GOP*, VILLAGE VOICE, Feb. 5, 2004. Sharpton also
13 acknowledges that he traveled extensively for NAN while he was a presidential candidate.
14 Sharpton 2004 Resp. to FEC Matching Funds Inquiry at 2. Although NAN asserts that the
15 allegation that NAN shared events with Sharpton's campaign is baseless, NAN Resp. at 2, Pitts'
16 reported statements, combined with evidence of campaign-related trips for which no travel
17 expenditures were reported by the Committee, provide a reasonable basis to infer that NAN may
18 have subsidized Sharpton's campaign travel by paying for the entirety of Sharpton's travel to
19 campaign-related events. As a result, there is a sufficient basis to investigate whether Sharpton
20 engaged in any campaign-related travel that was paid for by NAN, but not reported or
21 reimbursed by the campaign, in violation of 2 U.S.C. §§ 434(b)(4)(A) and 441b.

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1 In addition, there is also information supporting the allegation that Stone paid for certain
2 of Sharpton's travel expenses with Stone's personal credit card. One Sharpton campaign worker
3 reportedly stated that Stone informed him that Sharpton ran up \$18,000 on his credit card last
4 year to cover Sharpton's travel expenses for a trip to California for, among other things, a NAN
5 fundraiser. *See Wayne Barrett, Sleeping With the GOP, VILLAGE VOICE, Feb. 5, 2004.* Sharpton
6 reportedly responded to this charge by arguing that the travel expenses charged by Stone were
7 for travel to "our annual event in California."¹⁴ *Id.* Again, because there is credible evidence
8 that Sharpton frequently commingled NAN events with campaign activities, there is a sufficient
9 basis to investigate whether Stone made in-kind contributions to Sharpton 2004 by paying for
10 campaign-related travel in amounts that exceed the Act's contributions limits and were not
11 disclosed on the Committee's reports.¹⁵ Furthermore, because Sharpton was an officer of NAN,
12 and appears to have consented to most, if not all, of any travel expense disbursements, including
13 those made to reimburse prior campaign expenses charged to his personal American Express
14 card, the Commission is also making findings against Sharpton personally.

15 Based on the foregoing, the Commission finds reason to believe that Sharpton 2004 and
16 Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(A) by not

¹⁴ Stone's one page response to the complaint does not discuss the substance of the complaint in detail, but rather makes a general attack on the credibility of the *Village Voice* article cited in the complaint and categorically denies that he violated the Act in any way. *See Stone Resp.* at 1.

¹⁵ To the extent that any of the expenses incurred by Stone were transportation costs, 11 C.F.R. § 100.79 states that any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a contribution to the extent that: (1) the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and (2) the aggregate value of the payment made by such individual on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. However, because Stone purportedly spent \$18,000 on travel expenses in connection with Sharpton's campaign without receiving reimbursement, this exception would not eliminate the in-kind contribution from Stone. *See also* 11 C.F.R. § 100.139.

1 reporting all of its campaign-related expenditures, including, but not limited to, in-kind
2 contributions from NAN and Roger Stone; and that Alfred C. Sharpton, Sharpton 2004 and
3 Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C §§ 441b and by
4 accepting impermissible in-kind corporate contributions from NAN and 2 U.S.C. § 441a(f) by
5 accepting excessive in-kind contributions from Roger Stone.

6 2. *Salaries of Campaign Employees and Consultants*

7 The complaint alleges that NAN paid salaries or fees to Sharpton's campaign employees
8 and consultants in violation of 2 U.S.C. § 441b. *See* Second Am. Compl. at 3-5. The available
9 information suggests that NAN may have subsidized the salaries and fees.

10 Several news accounts reportedly quote employees and consultants of the Sharpton
11 campaign who state that NAN partially paid for their salaries or fees. For instance, former
12 Sharpton campaign staffer Elizabeth Burke reportedly stated that she was paid \$1,000 a week to
13 fulfill her duties as logistical director for all of Sharpton's campaign events, but half of this
14 money was paid by the campaign, and half by NAN.¹⁶ *See* Wayne Barrett, *Sleeping With the*
15 *GOP*, VILLAGE VOICE, Feb. 5, 2004. Furthermore, Burke is quoted as stating that campaign
16 consultants from Archer Group, Inc. were vastly underpaid compared to the amount of the work
17 that they performed for the campaign. *Id.*

18 In the same article, Archer Group, Inc. consultant Michael Pitts, reportedly confirms that
19 his consulting firm was largely paid by NAN, even though the bulk of the work performed was
20 related to Sharpton's campaign. As discussed above, the article also quotes Pitts as admitting

¹⁶ Sharpton 2004's disclosure reports show that Burke was paid a total of \$5,000 in salary from the campaign, and that these payments were made between October 17, 2003 through November 28, 2003. It is unclear how much NAN paid Burke during this period.

1 that he knew that events he scheduled for Sharpton's campaign were "commingled" with NAN
2 events. *Id.*

3 Furthermore, it appears that NAN may have paid for the services of the campaign's
4 videographer, Eddie Harris. Harris traveled to campaign events with Sharpton, and the
5 Committee's disclosure reports list some direct payments to Harris for "Campaign Video Taping
6 Service" and report debts outstanding to Mr. Harris for his services, as well as debt owed to
7 Sharpton for Mr. Harris' travel expenses. However, the Committee now argues that the expenses
8 related to Harris were not campaign-related, but were related to the Sharpton's activities as head
9 of NAN.¹⁷ Although it is possible that Harris provided services that were both campaign and
10 non-campaign related, even if they were dual purpose, the salary and travel expenses for Harris
11 would still need to be allocated. *See* 11 C.F.R. § 106.3.

12 The discrepancies in the information suggest that there may have been a commingling of
13 services for the campaign and NAN, without the proper allocation, and provide a basis for
14 investigating whether and/or to what extent the services of Burke, Pitts, Archer Group, Inc., and
15 Harris were campaign-related, and if so, the amount of their compensation, the source of that
16 compensation, and the payment of any campaign-related travel by those individuals.

17 Based on the foregoing, the Commission finds reason to believe that Sharpton 2004 and
18 Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(A) by not
19 reporting in-kind contributions from NAN in the form of payments for services of employees and
20 consultants; and that Alfred C. Sharpton, Sharpton 2004 and Andrew A. Rivera, in his official

¹⁷ Although the Committee makes this assertion, it has failed to amend its disclosure reports accordingly, and in fact, the Committee has filed reports as recently as January 31, 2005 which still list outstanding debts to Harris for "campaign videotaping services."

1 capacity as treasurer, violated 2 U.S.C. § 441b by accepting those impermissible in-kind
2 corporate contributions from NAN.

3 **3. Hawkins Event**

4 The complaint alleges that LaVan and Wendy Hawkins held a fundraiser for Sharpton in
5 their Atlanta home in early 2003, but the Committee did not report any expenditures or in-kind
6 contributions related to the event. The complaint specifically notes that Hawkins provided
7 Sharpton with transportation to the event on Hawkins' private jet. Compl. at 3. Mr. and Mrs.
8 Hawkins deny that the party was a Sharpton fundraiser, claiming that the party was held in
9 connection with the NBA All-Star game weekend that was held in Atlanta in 2003. Hawkins'
10 Resp. at 1. Hawkins acknowledges that Sharpton traveled aboard the plane from Detroit to
11 Atlanta to attend the party, but argues that he did not send the plane to Detroit specifically to
12 pick Sharpton up. *Id.* at 2. Rather, he was aboard his jet when it traveled from Detroit to Atlanta
13 that weekend because he regularly commutes from Detroit to his home in Atlanta. *Id.*

14 Pursuant to the Act, and its corresponding regulations, any expenses that the Hawkins
15 incurred for a fundraising dinner held on behalf of Sharpton are in-kind contributions to
16 Sharpton's committee and must be reported on the Sharpton Committee's disclosure reports, and
17 comply with the limitations and prohibitions of the Act. 2 U.S.C. §§ 431(8)(A)(i) and 434(b)(2).
18 Also, if Hawkins provided transportation for Sharpton to attend the event, that would also
19 constitute an in-kind contribution to Sharpton 2004 if Hawkins was not reimbursed for the value
20 of the travel. *See* 11 C.F.R. § 100.93(a)–(c).

21 An *Ebony* magazine article, purportedly based on a first-hand account of the party,
22 provided the following description of the event, "Fresh crab cakes and carved beef tenderloins

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1 were washed down by \$200 a bottle Cristal champagne. Hawkins worked the crowd, at times
2 talking business and world politics with guests, at other times, seeming to 'shake down' guests
3 for donations. Sharpton...gave a rousing speech, and guests ponied up their contributions on
4 their way out the door." Kevin Chappell, *How La-Van Hawkins Rose From the Projects to a*
5 *Private Jet and a Multi-Million-Dollar Empire*, EBONY, Apr. 2003, at 42. Furthermore, the
6 complaint points out that \$8,000 in contributions from Hawkins Food Group employees were
7 reported as having been received by Sharpton 2004 around the time of the fundraiser. Compl. at
8 4. Although the timing of the contributions from the Hawkins and the other Hawkins Group
9 employees does not conclusively show that the Hawkins' event was a Sharpton fundraiser, the
10 first hand account of the party contained in the magazine article, in conjunction with the
11 contributions, does provide a basis to investigate whether the party was in fact a fundraiser for
12 Sharpton's campaign.

13 LaVan and Wendy Hawkins each reached their contribution limit to Sharpton 2004 by
14 making separate \$2,000 contributions to Sharpton on March 12, 2003. *See* 2 U.S.C. §
15 441a(a)(1)(A). Although the cost of voluntarily provided invitations, food and beverages are not
16 contributions if they do not exceed \$1,000 with respect to any single election, *see* 11 C.F.R. §
17 100.77, the description of the event suggests that the cost would have far surpassed the \$1,000
18 limit. Furthermore, there is no information to suggest that Sharpton reimbursed Hawkins for the
19 value of the transportation provided to Sharpton for travel to Atlanta for the party that appears to
20 have been a fundraising dinner for Sharpton's federal candidacy. Whether Mr. Hawkins was
21 already planning to make the plane trip is not relevant, as it is the benefit provided to the

1 **Sharpton campaign by not having to pay for Sharpton's travel expenses that results in an in-kind**
2 **contribution.**

3 **Based on the foregoing, the Commission finds reason to believe that Alfred C. Sharpton,**
4 **Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. §**
5 **441a(f) by accepting excessive in-kind contributions in connection with a fundraising dinner held**
6 **to benefit Sharpton's campaign; and finds reason to believe that Sharpton 2004 and Andrew A.**
7 **Rivera, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2)(A) by not reporting**
8 **those contributions.**

9 **B. Loans from Stone to NAN**

10 **The First and Second Amended Complaints allege that Roger Stone subsidized**
11 **Sharpton's campaign by loaning over \$200,000 to NAN, for the purpose of directing the money**
12 **into Sharpton's campaign by paying for Sharpton's travel expenses and campaign consultants.**

13 **The Act provides that a contribution includes a loan made by a person for the purpose of**
14 **influencing any election for Federal office. 2 U.S.C. § 431(8)(A). Furthermore, 11 C.F.R. §**
15 **100.52(b) provides that a loan that exceeds the contribution limits of 2 U.S.C. § 441a shall be**
16 **unlawful whether or not it is repaid, and further, that a loan is a contribution at the time it is**
17 **made and is a contribution to the extent that it remains unpaid. Therefore, if Stone made over**
18 **\$200,000 in loans to Sharpton for the purpose of funding campaign expenses, Stone has**
19 **exceeded the Act's contribution limit at 2 U.S.C. § 441(a)(1)(A). See 2 U.S.C. § 441a(a)(8).**

20 **The complaint's allegations are supported by purported quotes from a news article in**
21 **which a Sharpton campaign employee, Elizabeth Burke, stated that Archer Group, Inc. campaign**
22 **consultants Pitts and Coleman were told by Stone that Stone made "at least two loans in six**

1 figures to NAN, totaling well over \$200,000." See Wayne Barrett, *Sleeping With the GOP*,
2 VILLAGE VOICE, Feb. 5, 2004. Furthermore, the article cites another Sharpton campaign worker
3 as stating that Stone told him that he took a \$270,000 promissory note from Sharpton. *Id.* The
4 news article is purportedly based on first-hand interviews with these individuals and provides
5 sufficient detail on which to base an investigation into whether Stone loaned funds to NAN for
6 the purpose of allowing NAN to fund Sharpton's campaign activities and whether such loans
7 were excessive contributions pursuant to 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(8).

8 Therefore, the Commission finds reason to believe that Sharpton 2004 and Andrew A.
9 Rivera, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b)(2)(A) by
10 accepting and not reporting such contributions.

11 **C. Sharpton 2004 Reporting Deficiencies**

12 Sharpton 2004's filed disclosure reports raise several additional questions about the
13 Committee's receipts and disbursements.¹⁸ For instance, in the Committee's April Monthly
14 Report, the Committee reported a total of approximately \$10,600 of activity. See Sharpton 2004
15 April Monthly, Detailed Summary, filed April 28, 2004. However, the Committee amended the
16 report several days later, increasing the amount of its disbursements by \$100,000. See Sharpton
17 2004 April Monthly, Amended, filed May 7, 2004, Detailed Summary. The revised amount

¹⁸ In addition, in 2004, the Sharpton Committee's treasurer did not file seven of the Committee's required monthly disclosure reports in a timely manner. See 2 U.S.C. § 434(a)(3)(A)(i). More specifically, the Committee's 2004 February, April, May, June, October, November and December reports were filed after the 20th day of the month in which they were respectively due. The 2004 February monthly report was filed on February 21; the April monthly report was filed on April 28; the May monthly report was filed on June 25; the June monthly report was filed on June 25; the October monthly report was filed on October 22; the November monthly report was filed on January 31, 2005; and the December monthly report was filed on January 31, 2005. The late filings of the April and May, monthly reports are being processed through the Administrative Fines Program. The Commission approved the Reports Analysis Division's Administrative Fines Final Determination Recommendations dated August 12, 2004, and September 17, 2004, assessing a \$1,600 fine for the late April Monthly and \$175 for the May monthly, respectively.

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1 appears to be the result of an additional disbursement added to the amendment for a loan
2 payment of \$100,000 that was not included in the original report. *See* Sharpton 2004 Amended
3 April Monthly, Schedule C, filed May 7, 2004. It appears that, as a result of that payment, the
4 Committee reported a negative cash on hand balance of almost \$100,000 on its May, June, July
5 and August monthly reports. This raises the question of where the funds used to pay for the bank
6 loan came from and whether a contribution resulted, either from the bank to the Committee, or
7 from some other source that provided the funds to make the payment to the bank. Furthermore,
8 the Committee's reports indicate that the bank loan in question is due "upon demand". Pursuant
9 to 2 U.S.C. § 431(8)(B)(vii)(II) a bank loan made to candidate must be subject to a due date or
10 amortization schedule.

11 In addition, to be eligible for public funds, a candidate must certify that he has not and
12 will not incur expenditures in excess of \$50,000 on behalf of his campaign. 11 C.F.R. §§
13 9033.2(b)(2) and 9035.2. Although Sharpton did submit such a certification, a Commission
14 investigation showed that Sharpton incurred \$116,976 in expenditures on behalf of his campaign
15 as of January 2, 2004, the date he submitted his application for matching funds. *See* Statement of
16 Reasons in Support of Final Determination to Suspend Matching Funds (Apr. 29, 2004).
17 Moreover, the amount in excess of Sharpton's personal expenditure limitation continued to
18 increase after that date and totaled \$169,198 as of March 2, 2004, more than three times the
19 \$50,000 limitation and \$119,198 in excess of the limitation. *Id.* Sharpton was or should have

1 been aware of expenditures on behalf of his presidential campaign because the expenses were
2 incurred on his personal credit card.¹⁹

3 In its response to the initial determination to suspend public funds, the Committee
4 claimed that its disclosure reports were incorrect because the expenditures were rough estimates
5 of campaign-related expenditures made by Sharpton, and included a host of expenses that were
6 not in fact campaign-related. According to the Committee, "Had the committee known that the
7 reports would jeopardize its eligibility for matching funds, it would have devoted the resources
8 necessary to gather the appropriate documentation and conduct a precise calculation of campaign
9 versus non-campaign-related expenditures." Sharpton 2004 Resp. to FEC Matching Funds
10 Inquiry at 2.

11 Based on the foregoing, the Commission finds reason to believe that Sharpton 2004 and
12 Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by not
13 reporting the source of the money used to make the bank payment disclosed on the Committee's
14 Amended April Quarterly Report; and knowingly and willfully violated 2 U.S.C. § 434(b)(4)
15 when it knowingly submitted disclosure reports with inaccurate information regarding its
16 campaign expenditures.

¹⁹ The Commission did not withhold certification and matching payments pending the results of the investigation because Sharpton's threshold submission was adequate and did not contain "patent irregularities suggesting the possibility of fraud," and the policy of the certification process is to "provide prompt payments to eligible candidates." See *Committee to Elect Lyndon LaRouche v. Federal Election Commission*, 613 F.2d 834, 841-842 (D.C. Cir. 1979); 11 C.F.R. § 9039.3(a)(3).